

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON HOUSE BILL 473

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on April 11, 2001
at 5:17 P.M., in Room 172 Capitol.

ROLL CALL

Members Present: Sen. William Crismore, Chair
Sen. Glenn Roush
Rep. Cindy Younkin, Vice Chair
Rep. Douglas Mood
Rep. Gail Gutsche

Members Excused: Sen. Fred Thomas

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jan Brown, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 473, 4/11/2001
Executive Action: HB 473

FREE CONFERENCE COMMITTEE ON HB 473

{Tape : 1; Side : A; Approx. Time Counter : 1.9 - 5}

Chairman William Crismore called the meeting to order. He stated that members had been handed a copy of the April 11 letter from the Governor regarding the amendment to HB 473.

EXHIBIT (frh82hb0473a01)

Rep. Younkin said that the orange copies that Mr. Mitchell had distributed were the amendments that they had put on the bill the other day, and the white copies he distributed were the amendments she wanted to put on the bill. There is a difference in amendment number 2, where it says "parts 1 through 3 of this

chapter" instead of just "this chapter." That was because parts 1 through 3 are cited in the code as being the Montana Environmental Policy Act. There are one or two more parts in Title 75, Chapter 1 that are not actually part of MEPA, so she thought that it was important that they clarify that. Amendment number four also has parts 1 through 3 of this chapter, being MEPA, do not confer authority to an agency that is a project sponsor to modify a proposed project or action. This amendment was suggested by John North, DEQ's chief legal counsel, after some discussions in regard to amendment number 4 on the orange copy that they had put on the bill the other day, and some of the problems that the agencies thought that amendment would create for them. They felt that the revised language in number 4 on the white copy would not create the same kind of problems. The Dept. of Fish, Wildlife and Parks thought that with the language on orange copy number 4, they would be locked into whatever they proposed, and after the environmental review they could not then change. That wasn't the intention. Her intention was that if they have the authority to act to start with, then they also have the authority to modify it. The revised language on white copy number 4 clarifies her intentions and does not put the department in the awkward position that they thought that they would be with the orange number 4 amendment.

{Tape : 1; Side : A; Approx. Time Counter : 5.1 - 6.8}

Motion: Rep. Younkin moved to remove the orange set of amendments (numbered HB047306.alm) if, in fact, they are considered to be on the bill and to add the white set of amendments (numbered HB047312.alm) to HB 473.

Rep. Gutsche requested that the motions be segregated. Chairman Crismore said that was fine with him.

Motion/Vote: Rep. Younkin moved to remove the orange set of amendments (numbered HB047306.alm) from HB 473 if they had previously been added to the bill. Motion carried 5-0.

Motion: Rep. Younkin moved that white copy amendments to HB 473 (numbered HB047312.alm) be adopted.

{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 16.5}

Discussion: Rep. Gutsche referred to the Governor's letter of April 11, which stated that the affected agencies all agree with this proposed language, and she asked Rep. Younkin if she had actually talked with anyone at the agencies. Rep. Younkin said she had spoken with John North from DEQ, Bob Lane from FWP, Lyle Manley and Kimbel or Kembel from DOT, and Bud Clinch from DNRC.

Rep. Gutsche said even though this is a simple amendment, she is still trying to figure out exactly what it does. She asked **Mr. Mitchell** if he could expound on amendment 4. **Mr. Mitchell** said in the instances where an agency is the sponsor of a project and there is no outside applicant requesting a response or permit, such as construction of a highway, a timber sale, or the building of a boat ramp or access site for FWP, MEPA cannot be used as an authority. 1 through 3 is MEPA, and that does not confer any authority to the agency to modify the project. The implication is that any modifications need to be done under the existing statutory and regulatory authority that the agency has to build the highway, to construct the boat ramp, or to conduct the timber sale.

Rep. Gutsche asked **Rep. Younkin** if the amendment covers the instances, and many were outlined in letters, where the agency does not have authority to act either by statute or regulation.

Rep. Younkin said she didn't have copies of the letters with her, but she remembered specifically the example of FWP regarding latrines on fishing access sites. If the department has the authority to build the fishing access site in the first place and has the authority to put a latrine on it, then they have the authority to put that latrine wherever they think that it needs to be. So, if through the environmental review process they have had public comments that it would be better to put the latrine on the west side instead of on the east side, they had authority to do it in the first place so they have authority to put it where they think that it should be, based on the initial reason why they were doing it to start with. If there was some public input that helped them make a better decision, then they can still do that and their modification is not based on the public input through the environmental review alone, it's based on the authority that allowed them to put it there in the first place.

Rep. Gutsche asked what would happen if they had the authority to put the latrine wherever, then they find out there is some problem, such as it's draining or somehow affecting water quality, and they want to move it. Do they have the authority to move it and the authority to mitigate any problems with it after they've already placed it? **Rep. Younkin** said she thinks that they do. In the example given, if it's going to affect water quality, then they could do it not only under their initial authorization to put it there in the first place but also under the Water Quality Act. If it's something else, because they had the authority to build this fishing access site in the first place and put a latrine on it, they have the authority to put that latrine wherever they think that it needs to be, based on whatever information they gathered. They had the authority to do it in the first place, so they have the authority to modify it or

mitigate whatever they think needs to be mitigated. **Rep. Gutsche** asked **Mr. Mitchell** if he concurred with that assessment of the amendment. **Mr. Mitchell** said he thought that what has been said is accurate.

Chairman Crismore asked **Rep. Younkin** if, when she met with the FWP attorney and had probably talked about the letter and the latrine, Mr. Lane had been satisfied with the amendment. **Rep. Younkin** said he was. **Chairman Crismore** said that he feels this amendment clarifies it, and they had gone through the efforts of going back and talking to all of the concerned departments and their attorneys, so he felt comfortable at this point.

Rep. Gutsche asked about a situation described in the FWP letter regarding construction of a boat ramp, where they had received overwhelming public comment and concern that installing a double-wide boat ramp would result in increased motor use and social conflicts on the river. She wondered if this amendment would deal with that situation, if they came back and said that originally they were going to do it one way but later realized that the social conflicts would be unacceptable for whatever reasons. She wondered if this amendment would allow them to do that, which is a little different from actually moving something. **Rep. Younkin** asked her to clarify if she was asking if FWP could decide to put in a single-wide boat ramp or maybe not put in a ramp at all, and **Rep. Gutsche** said yes, after they had already decided to do one, based on public comment or some other input. **Rep. Younkin** said she thought that they could because they had the authority to act to start with. If they have the authority to act, then they have the authority not to act or the authority to change their actions in some way, all under the same act, not under MEPA itself. **Rep. Gutsche** asked **Rep. Younkin** if she thought this amendment would allow them to mitigate concerns under their original action, and **Rep. Younkin** said that is correct.

Sen. Roush read an excerpt from the letter received from the Dept. of Environmental Quality in response to Rep. Gutsche's request, which stated that the agency does not undertake abandoned mine reclamation projects, mainly it performs environmental reviews on abandoned hard rock mine projects, and those projects would be subject to the conference committee amendment. He asked if that amendment is now gone. **Rep. Younkin** said they were referring to the old amendment that this committee has now taken off. **Sen. Roush** said he had wanted to clarify this, and now he is comfortable with it.

{Tape : 1; Side : A; Approx. Time Counter : 16.5 - 17.2}

Motion: Rep. Gutsche moved to segregate amendment number 3.

Discussion: Rep. Gutsche said the reason she wanted to do this was for the same reasons she had talked with this conference committee about last time, but she thought the language is really good that the Senate had put in. It really defines public health and human safety, which is really important, and she would like to see that language stay in.

Chairman Crismore agreed to segregate the amendments.

{Tape : 1; Side : A; Approx. Time Counter : 17.2 - 19.6}

Motion/Vote: Rep. Younkin moved that amendments 1, 2 and 4 (amendments numbered HB047312) to HB 473 do pass. Motion carried 5-0.

Motion: Rep. Younkin moved that amendment 3 (amendments numbered HB047312) to HB 473 do pass.

Discussion: Rep. Gutsche said she thought she had made herself pretty clear, and she still thinks that the amendments put on in the Senate with regard to that particular portion of the bill that actually discuss protecting public health or safety, mitigating impacts to fish or wildlife resources, and mitigating other impacts to human environment based on, etc., is really good language and she would strongly urge that that language be kept in rather than adopting the third amendment. She thinks it gives all of these agencies direction. It is her understanding that that's what the folks who were working on these MEPA bills wanted to do, to give more clear direction. **Chairman Crismore** asked Rep. Younkin if she wanted to respond. Rep. Younkin said she thought about it but thought that the record from the conference committee's last meeting is fairly clear. She said she would state briefly that it is clearer with this amendment that you say nothing in the subsection prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated. She doesn't know that they need to give any direction as to what measures they may agree to mutually develop. Whatever that is, if they want to mutually agree to it, she doesn't have a problem with it, and that's the reason she just didn't want there to be anything that could be misinterpreted such as these are the only things that you can agree to. She thought it was clearer, and that was the reason for the amendment to start with.

{Tape : 1; Side : A; Approx. Time Counter : 19.6 - 20.6}

Motion: Rep. Younkin moved that amendment 3 (amendments numbered HB047312) to HB 473 do pass. Motion carried 4-1 with Rep. Gutsche voting no.

ADJOURNMENT

Adjournment: 5:35 P.M.

SEN. WILLIAM CRISMORE, Chairman

Jan Brown, Secretary

WC/JB

EXHIBIT (frh82hb0473aad)